IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9411 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMILABEN PRATAPRAI JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9411 of 1999

MS ROOPAL R PATEL for Petitioner No. 1

MR K.L.PANDYA, AGP for Respondent No. 1, 4 and 5

MS SEJAL SUTHARIA for Respondent No. 3

MS TEJAL A VASHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/11/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Rupal Patel for petitioner, learned AGP Mr. K.L.Pandya appearing on behalf of respondent Nos. 1, 4 & 5, learned advocate Ms. Sejal Sutharia appearing on behalf of respondent No.3 and

learned advocate Ms. Tejal A Vashi appearing on behalf of respondent No.2.

2. Against the present petition, respondent No.4 has filed affidavit-in-reply on 18.7.2001, respondent No.2 has filed affidavit-in-reply on 31.7.2002 and affidavit-in-reply of respondent No.3-Mahuva Primary Education Committee has been filed on 31.7.2002. Along with the affidavit-in-reply respondents have produced certain records. Rule has been issued in this matter on 1.12.1999.

3. The brief facts of the present petition are as under.

3.1 The husband of the petitioner was appointed on the post of Peon by the respondent No.3 on 13.11.1968 and his services were regularised in pursuance to the Government Resolution dated 29.7.1974. After completion of more than 22 years service, during the course of employment the husband of the petitioner was expired on 9.4.1991. The claim for family pension put up by the widow, present petitioner, has been rejected by respondent No.4 District Local Fund Officer on the ground that there is no direction issued by the Government to scrutinize the case of family pension of the petitioner, except that they should have to scrutinize and verify the pay fixation of the deceased husband of the petitioner. According to respondent No.4, it is burden upon respondent No.2-Mahuva Nagarpalika who has to bear 100% expenses for the said post. The respondent No.2-Mahuva Nagarpalika had expressed its inability to bear 100% expenses and the stand taken by respondent No.2 that they were governed by Contributory Provident Fund scheme and, therefore, no pension scheme is applicable to the employees of Mahuva Nagarpalika. Respondent No.3 has submitted the report (at page 22) whereby liability of family pension has been accepted by letter dated 27.3.1996, then no payment of family pension has been made to the widow, therefore, legal notice was served by the petitioner to the respondents and a reply given by the respondent No.3 again repeating the inability for making payment of family pension by reply dated 23.12.1997. Ultimately the matter remained as it is because of the dispute raised by each respondents denying the claim of family pension of the widow. It is a case where the Government machinery or a corporate body working in a fashion denying legal and fundamental right to the petitioner who is entitled the said benefit as a matter of right. I fail to understand the stand taken by each respondents against the claim made by the petitioner

for family pension. Certain undisputed facts are on record, not denied by any of the respondents.

3.2 The Staff Selection Committee of Mahuva Nagarpalika Education committee met on 3.11.1968 in Bathak No.4 consisting Chairman of Education Committee, Administrative Officer of the Education Committee and Chief Officer of Mahuva Nagarpalika under the provisions os Section 23(2) of the Bombay Primary Education Act. The selection committee has selected the husband of the petitioner on the post of Peon on temporary and ad hoc basis with a clear condition that his services can be terminated even without issuing notice and it was a temporary arrangement made by the Education Committee. The selection of the husband of the petitioner was not in dispute because the record has been produced by the Education Committee. Page 22 is a letter dated 27.3.1996 addressed to the District Collector, Bhavnagar by the Administrative Officer of the Education Committee, wherein, in paragraph 2, it is made clear that Mahuva Nagarpalika has accepted the administration of Primary Education on 1.7.1965 and on that occasion there were 12 Primary Education Schools and in the said Schools two posts have been filled up by the Staff Selection Committee of the Education Committee in Bathak No.4 after taking necessary interviews of such candidates. The said Resolution of Bathak No.4 dated 3.11.1968, which was a temporary arrangement of selection of the husband of the petitioner was sent to the State Government for regularising the services of the husband of the petitioner by Resolution of General Body of Mahuva Nagarpalika dated 10.12.1968-Resolution No.5. The said Resolution was sent to the State Government by Resolution No.6 and ultimately the state Government has sanctioned total 9 posts. Out of 9 posts, 8 posts for Peon and 1 post for Watchman by Resolution dated 29.7.1974 with a rider that Government will not bear the expenses of the said posts and no grant is available to the Education Committee for the said 9 posts. But State Government has made it clear that expenses of the said 9 posts is required to be debited in Primary Education Fund of School Mandal which has been received by the Nagarpalika by way of grant from the State Government. On the basis of Government Resolution dated 29.7.1974, which is annexed by the Education Committee, the service of the husband of the petitioner was regularised. This being a clear averment made by the Education Committee in letter dated 27.3.1996. So, the contention which has been raised by the learned advocate Ms. Sejal Sutharia appearing on behalf of respondent No.3 that the husband of the petitioner was a temporary employee and Education

Committee has not made him permanent and therefore he is not entitled the pension and result thereto widow, present petitioner is also not entitled the family pension, this contention is apparently incorrect and contrary to the own records of Education Committee. There letter suggests a different aspect which is exactly contrary to the submissions made by respondent No.3 before this Court. Therefore, husband of the petitioner who was appointed in pursuance to the selection dated 3.11.1968 in Bathak No.4 on temporary basis subsequently by Government Resolution dated 29.7.1974 and the husband of the petitioner was regularised on the post of Peon in the Education Committee-respondent No.3. The husband of the petitioner died on 9.4.1991 which is not in dispute between the parties. It is also not in dispute that when the husband of the petitioner died, he was receiving the benefit of Government Provident Fund scheme and not Contributory Provident Fund scheme. This was a clear admission made by Mahuva Nagarpalika in its reply which is at page 41. Necessary averments made therein are quoted as under:

> "I further say that the service conditions of the employees of the Shikshan Samiti are governed under the Bombay Primary Education Act. I further say and submit that, as I understand, the petitioner is already paid the Provident Fund amount. I say that the Provident Fund amount paid to the petitioner was under the G.P.F. scheme, which is applicable to the employees of the Government whereas under the Municipalities Act, the Contributory Provident Fund scheme applies to all the employees of the Municipality."

Therefore, the second aspect is also very clear from the record on the basis of the admission made by Nagar Palika that the husband of the petitioner was governed at the relevant time under the G.P.F. scheme which is similarly applicable to the Government employees. In light of this undisputed fact, the question is, whether the husband of the petitioner, who died during the course of employment on 9.4.1991, was entitled to receive the pension or not; and if Yes, then whether, present petitioner is entitled family pension or not; and the third question is that whether the petitioner-widow is entitled the family pension from whom. For giving the answers to the above questions, I am not repeating the detailed affidavit-in-reply which have been submitted by each respondents but I am referring the contentions which have been broadly raised

before this Court by the respondents.

4. Learned advocate Ms. Tejal Vashi appearing on behalf of respondent No.2-Mahuva Nagarpalika has raised the contention that the husband of the petitioner was not an employee of the Mahuva Nagarpalika and he was an employee of Education Committee, therefore, Nagarpalika is not liable to make any payment to the present petitioner. She also raised contention that the amount of GPF is paid by respondent No.3-Education Committee and not by Nagarpalika. She also submitted that Nagarpalika was receiving 95% grant in the head of Primary Education Fund and that has been transferred by the Nagarpalika to Education Committee. Therefore, ultimately it is the liability of respondent No.3-Education Committee and not of Nagarpalika. She also relied upon the reply filed by the Nagarpalika.

5. Learned advocate Ms. Sejal Sutharia appearing on behalf of respondent No.3-Education Committee has raised contention that, in the selection committee dated 3.11.1968 the husband of the petitioner was selected on the post of Peon on temporary basis being a temporary arrangement on ad hoc basis and subsequently he was made permanent and therefore husband of the petitioner was not entitled the pensionary benefits and petitioner is also not entitled family pension from the respondent No.3 Education Committee. She also raised contention that by Government Resolution dated 29.7.1974, though post has been sanctioned but, it was not considered to be a grantable and that is how it is the liability of the Nagarpalika and not the Education Committee. She further submitted that the husband of the petitioner was an employee of the Nagarpalika and not the employee of respondent No.3 Education Committee. She referred certain documents which are not annexed to the petition to give proper and complete justice to the submission of respondent No.3. This Court has given permission to the learned advocate Ms. Sejal Sutharia to show this Court the relevant records which have been shown to this Court. She relied upon one letter dated 6.4.1996 from respondent No.4 wherein it was mentioned that the husband of the petitioner was not an employee of respondent No.3 Education Committee because he was included in the set up sanctioned by the State Government. She also referred the letter of respondent No.4 dated 4.5.1996 wherein it was made clear by respondent No.4 that the deceased was not considered to be an employee of Education Committee. She also relied upon the letter dated 10.5.1996 from respondent No.4 where the same averments have been made that deceased was an employee of Nagarpalika and not the

Education Committee. Over and above, she relied upon the affidavit-in-reply filed by the respondent No.3. She also submitted that the Education Committee has not received the grant in respect of the nine posts as per the Government Resolution dated 29.7.1974 and, therefore, respondent No.3 is not liable to make any payment but same is required to be paid by respondent No.2-Mahuva Nagarpalika. Except that no other submission has been made before this Court by the learned advocate Ms. Sejal Sutharia.

6. Learned AGP Mr. K.L.Pandya has submitted that the respondent No.4-District Local Fund Officer has rightly answered the letter received by respondent Nos.2 and 3 because, there is no Government direction issued to respondent No.4 to scrutinize and verify the case of the petitioner for family pension. Learned AGP Mr. Pandya has submitted that according to respondent No.4 the husband of the petitioner was not an employee of Education Committee but he was an employee of Mahuva Nagarpalika. Therefore, the husband of the petitioner was not entitled the pensionary benefit, result thereto, naturally petitioner is not entitled the family pension from the respondent. Learned AGP Mr. Pandya also emphasized the averments at page 24 and 25 wherein he submitted that the expenses must have to be borne by School Mandal who is receiving the Primary Education Fund from the State Government. He further clarified that the said fund of School Mandal has been earmarked for such payments and, therefore, it is the liability of the School Mandal to make such payments. However, he further clarified that, at page 25 in last line of paragraph 4 it is said that whatever the expenses is required to be borne for the said post must have to be borne by Nagarpalika and accordingly State Government has sanctioned the post by Government Resolution dated 29.7.1974. Except that learned AGP has not made any other submission before this Court.

7. Learned advocate Ms. Rupal Patel appearing on behalf of petitioner has submitted that the husband of the petitioner died during the course of employment on 9.4.1991 after completing more than 22 years service as Peon working with Education Committee. She submitted that it was not in dispute between the parties that the deceased was governed by GPF scheme at par with Government employees. The amount of GPF was paid to the widow by the Education Committee, therefore, she submitted that it is a unique case of State Government and corporate authority denying the legal and fundamental right to the widow and sent to pillar to post and not

grant the benefit and no payment is made till date though more than 12 years have passed from the date of death of her husband. Therefore, according to her submission petitioner widow is entitled family pension because the husband of the petitioner was entitled pensionary benefits as he was an employee of the Education Committee and governed by the GPF scheme and she also relied upon one letter of Chief Manager of State Bank of Saurashtra, Mahuva Branch dated 10.8.2002 wherein one employee named Ranchoredas Kalidas Joshi who was working as Peon at the relevant time and retired on 31.7.1972 was receiving the pensionary benefits and he was working with Mahuva Primary Education Committee. She submitted that Mahuva Education Committee has given certificate that Shri Ranchoredas Kalidas Joshi was an employee of the Education Committee of Mahuva and he was working as Peon and retired on 31.7.1972 and receiving the pension and, for that, a certificate was issued on the basis of service book of Ranchoredas Kalidas Joshi. Similar letter dated 10.8.2002 from Chief Officer of State Bank of Saurashtra also made it clear that the widow of Ranchoredas Kalidas Joshi is receiving family pension as per pension order No. PPO/No.673 which amounts to Rs.2000.00 per month. The copy of these two certificates dated 9.8.2002 and 10.8.2002 are shown to all the learned advocates. This Court has considered these two letters being an example that, in an identical case, a Peon was working with the Education Committee had received the pensionary benefits and even after his death his widow is receiving the family pension from the Education Committee. She, therefore, submitted that the husband of the present petitioner was entitled for the pensionary benefit as he died during the course of employment. For a period of more than 12 years, the said benefit of family pension was not paid to the widow and that amount has been utilised by the committee and denied to the widow and therefore she submitted that this Court may consider the case while granting the benefit with interest and also cost.

8. I have considered the submissions made by all the learned advocates and I have also referred and relied upon the averments made in the petition and reply of all the respondents also and the documents which are annexed to the petition and with the reply filed by the respective parties.

9. The husband of the petitioner was selected by the Staff Selection Committee of respondent No.3 on 3.11.1968 as a temporary employee on ad hoc basis for temporary requirement. The letter dated 27.3.1996 of respondent

No.3-Education Committee; paragraphs 2, 3 & 4 are relevant, which are relied by the learned AGP Mr. Pandya. The very Resolution passed in Bathak No.4 dated 3.11.1968 wherein two persons were appointed on the post of Peon by the Education Committee; one is the husband of the present petitioner and another is Arjanbhai Chitaria. Thereafter, Resolution of Education Committee dated 3.11.1968 in Bathak No.4 has been forwarded to the Nagarpalika and General Body of the Nagarpalika has passed a Resolution No.5 dated 10.12.1968 and it was sent to the State Government for approval by Resolution No.6 by the Mahuva Nagarpalika. Thereafter, the proposal which was made by Mahuva Nagarpalika to the State Government has been accepted by Resolution dated 29.7.1974 on certain conditions that the expenses of the said nine posts (8 Peons and 1 Watchman) was not grantable and grant will not be given by the State Government but, the expenses of the said 9 posts is required to be debited in Primary Education Fund of School Mandal. On that condition the State Government has passed Resolution dated 29.7.1974. Meaning thereby that whatever the expenses is required to be borne by the School Mandal are required to be debited against the Primary Education Fund. In light of these facts, page 30 is reply of administrative officer of Respondent No.3 wherein opinion has been given in respect to issue No.4 in response to the notice issued by the petitioner. Page 30, in paragraph 1, the opinion has been given by the administrative officer of Respondent No.3 that as per issue No.2 the husband of the petitioner was appointed on the post of Peon after following the due process of law, therefore, the husband of the petitioner was considered to be an employee of respondent No.3-Education Committee and, therefore, the husband of the petitioner was entitled all the benefits which are available to non-teaching staff of Education Committee. The non-teaching staff of Education Committee getting all benefits which are available to Government employee. In paragraph 2 again, it has been repeated that expenses as per the Government direction must have to be borne by School Mandal which is earmarked in the Primary Education Fund and, therefore, again it was repeated that the husband of the petitioner was considered to be an employee of Education Committee and entitled all the benefits which are available to non-teaching staff of Education Committee at par with Government employees. In paragraph 3 it is also made clear that according to the sanction given by the Government, these employees are the employees of the Education Committee and, therefore, according to the opinion of respondent No.3, respondent No.4 must have to verify and scrutinize the pension

papers of the petitioner and after being scrutinised by the respondent No.4, subsequent procedure is required to be followed by the Education Committee. This being the clear admission which is at page 30 signed by administrative officer of respondent No.3. Therefore, considering this clear admission of respondent No.3 it is agreed to say that the deceased was the employee of the Education Committee, he was a member of non-teaching staff and whatever benefit available to non-teaching staff of Education Committee all the benefits are available to the deceased. After the respondent No.4 scrutinize the pension fixation as well as pensionary papers of the deceased and approve the same, thereafter necessary follow-up will be taken by the Education Committee. In view of this fact and having clear answer from respondent No.3 why respondent No.4 has not verified the pay fixation and scrutinized the pension papers of the deceased, for that there is no answer given by the respondent No.4. The stand taken by respondent No.4 is that the husband of the petitioner was not an employee of the Education Committee and he was an employee of Mahuva Nagarpalika but the expenses must have to be borne by the School Mandal from Primary Education Fund. Apart from the stand taken by each respondents, the fact remains which is not in much dispute between the parties.

10. In the background of this factual aspect, the Apex Court has considered the said aspect in the case of S.K.MASTAN BEE V. THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY AND ANOTHER, 2002 AIR SCW 4856. The Apex Court has observed that family pension claim after a long lapse of time by appellant widow of railway employee who died in harness, denial of family pension to appellant amounts to violation of her fundamental right to life guaranteed under Article 21. It is obligatory on part of Railways to have computed the family pension and offered the same to appellant as soon as it became due to her and also in view of fact that she is illiterate. The single Judge granting family pension to appellant w.e.f. date of death of her husband, the order of Division Bench of High Court restricting appellant's claim to a date much subsequent to death of her husband has been considered illegal by the Apex Court. The Apex Court has also awarded the cost of Rs.10,000 in favour of the appellant. The relevant observations made by the Apex Court in paragraph 5 & 6 are quoted as under:

"5. In this appeal, the appellant questions this restriction on her right to claim family pension w.e.f. 21.11.1969 the date on which her husband died. It is submitted on behalf of the

appellant that the Division Bench having agreed with the learned single Judge on the legal right of the appellant to receive family pension ought not to have confined the said right to a date much subsequent to the death of her husband, merely because a demand for payment of family pension was made only in the year 1992. Learned counsel for the appellant pointed out from the judgement of the Division Bench itself that it had held that the denial of family pension to the appellant amounted to violation of her fundamental right to life guaranteed under Article 21 of the Constitution and that the Division Bench had also held that in the circumstances of this case the delay in approaching the railway authorities cannot be considered to be fatal for the maintainability of the writ petition. The learned counsel submitted, based on these findings, that the Division Bench could not have restricted the appellant's claim to a date much subsequent to the date of death of her husband. Per contra, the learned counsel for the railways contended that the delay in approaching the Court was so large that it was not a fit case for the exercise of the discretionary remedy under Article 226 of the Constitution and that the High Court was in fact very generous to the appellant in granting the relief from the year 1992.

6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the

Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us herein above, the learned single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact that her husband was only a Gangman in the railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992."

11. Similarly the Apex Court has also considered the concept of pension in reported case of KERALA STATE ROAD TRANSPORT CORPORATION V. K.O.VARGHESE AND OTHERS, 2003 AIR SCW 2847. The Apex Court has observed that the benefit of pension can be said to be a deferred portion of compensation for service rendered. It is a measure of socio-economic justice which inheres economic security in ripe old age. The relevant observations made by the Apex Court in paragraphs 18, 20 and 22 are quoted as under:

"18. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison de'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon.

20. From the aforesaid analysis three things emerge: (i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. it must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable of the contract of service and that it can be reduced or withdrawn as disciplinary measure.

22. In its strict sense a pension is not a matter of contract, and is not founded on any legal liability, it is a mere bounty or gratuity "springing from the appreciation and

> consciousness of the sovereign", and it may be given or withheld at the discretion of the sovereign. It may be bestowed on such persons and on such terms as the law-making body of the Government prescribes, and it is, at most, an expectancy granted by the law. The term "pension" has been compared and distinguished from "bonus", "compensation", "profits" and "retirement payment". a pension fund is to be distinguished from an annuity fund derived in part from voluntary contributions under a statutory option to contribute or refrain from contributing."

12. I have considered the observations made by the Apex Court in above referred to cases and also applying the facts of the above referred cases to the present case, now, it is not in dispute between the parties when page 30 of the petition paper book is made clear by the respondent No.3 that the deceased was considered an employee of Education Committee. He was a permanent employee of the Education Committee. Though initially he was appointed by Staff Selection Committee dated 3.11.1968 which Resolution was forwarded to the Mahuva Nagarpalika and thereafter it was sent to the State Government by way of proposal and that proposal was accepted by the State Government in Resolution dated 29.7.1974 and a result of the said Resolution is that the deceased was made permanent on the post of Peon working with the Education Committee. He was receiving the GPF benefit at the time when he died at par with Government employees and he was not an employee of Mahuva Nagarpalika and, therefore, as per the Government direction, in Government Resolution dated 29.7.1974 the burden or liability of expenses of family pension from the Primary Education Fund of the School Mandal. Therefore, the contention which has been raised by learned advocate Ms. Sejal Sutharia that the husband of the petitioner was not an employee of the Education Committee is not accepted by this Court in light of the facts which are on record and admissions made by the administrative officer of the Education Committee which are at page 30 as referred above. Therefore, according to my opinion at the time when deceased died he was a permanent employee of respondent No.3- Education Committee working on the post of Peon and entitled to receive the benefit of pension but, because he died in harness on 9.4.1991 during the course of employment he was not able to get the pensionary benefit, therefore, the widow is entitled the benefit of family pension from respondent No.3 as a matter of legal right. The said

benefit has been wrongly denied by all the respondents and according to my opinion all the respondents are responsible for that. Because, ultimately, the Mahuva Nagarpalika is receiving the grant from the State Government. School Mandal having the primary education fund from the Government. If really, lift the corporate veil then it is really a burden of the Government to pay the pensionary benefits to the widow. The administration and internal affairs of the State Government, School Mandal, Education Committee and Mahuva Nagarpalika are not relevant for the widow that who will pay the family pension to the petitioner. Apparently, the liability has been thrown by each respondent upon next respondent being a technical stand taken by each respondent. Ultimately the sufferer is the widow who remained without family pension for more than 12 years. The said amount of family pension has been utilised by the respective parties as not paid to the petitioner. Therefore, in both ways, loss to the petitioner of interest amount and to maintain the family in absence of family pension amount. Therefore, considering the averments made in prayer part by the petitioner and also over all submissions made by learned advocate Ms. Rupal Patel for petitioner, according to my opinion, the petitioner is entitled the interest upon the due amount from the date of death of her husband. Considering the 12 years period from 1991 to 2003 if 10% interest is awarded it will be meet the ends of justice between the parties. Therefore, the deceased husband of the petitioner was entitled the benefit of pension under the rules from the respondent No.3-Education Committee. Since the husband of the petitioner died during the course of employment on 9.4.1991 therefore, from that date onwards being considered to be due date, the widow-present petitioner is entitled the benefit of family pension for each month and it is the liability of respondent No.3 to make necessary payments to the petitioner. Before that some exercise is required to be carried out by respondent No.4 under the rules. Therefore, some direction is necessary to respondent Nos. 3 & 4 to finalise the amount of family pension which is due in favour of present petitioner. Considering the averments made in the reply by respondent No.4, the service book of the deceased was not properly maintained which is required to be properly filled up by respondent No.3. Therefore, it is directed to the respondent No.3 to properly fill up the service book from the date of appointment of the deceased till the date of his death and periodical fixation of the salary of deceased and whatever the increments earned by the deceased during the course of his employment same must have to be given effect to and any pay revision in

between is also equally required to be given effect to in the salary of deceased and respondent No.3 shall have to submit the service book after properly filling up the service book of the deceased to respondent No.4 within a period of one month from the date of receiving the copy of this order. It is made clear that if the service book is already sent by respondent No.3 to respondent No.2 then respondent No.3 shall have to recall the same from the respondent No.2 and to submit to respondent No.4 within a period of one month. No further delay is permissible to the respondent No.3 on that account. It is further directed to respondent No.4 that after receiving the service book and all necessary papers from the respondent No.3 to scrutinize and verify the case of the petitioner for pay fixation of the deceased up to the date of his death and on that basis to fix the monthly family pension of the petitioner and pass necessary orders to that effect from the date of death of husband of petitioner within a period of one month from the date of receiving the copy of necessary papers and service book of the deceased. It is further directed to the respondent No.4 to communicate the said decision to the respondent No.3 immediately without any delay. It is further directed to the respondent No.3 to make necessary payments of due amount of family pension from due date 9.4.1991 till 30.10.2003 with 10% periodical running interest upon the said amount to the petitioner-widow within a period of three months from the date of receiving the copy of this order. Thereafter it is further directed to the respondent No.3 to pay monthly family pension amount to the petitioner widow which will be due on 30.11.2003 in December, 2003 on or before 15.12.2003 and further directed to pay regularly family pension to the petitioner widow till she is entitled according to law. Accordingly present petition is fully allowed. Rule is made absolute with Rs.10,000 cost awarded against the respondent No.3. However, it is made clear by this Court that amount of family pension as directed by this Court must have to be paid by respondent No.3 but, it is open for the respondent No.3 to request the responsible authority or respondents for necessary payments as per Government Resolution dated 29.7.1974 but, that being internal arrangement between them, for which, respondent No.3 should not have to wait for making necessary payment to the petitioner widow as per direction issued by this Court in the present order.

(H.K.Rathod,J)

Jayanti*